



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

NOV 25 2005

OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

Mr. Carl Palmer, Director  
Thermal Process Group  
TD\*X Associates, LLC  
P.O. Box 13216  
Research Triangle Park, NC 27709

Dear Mr. Palmer:

This letter concerns the TD\*X Associates, LLC (TDX) PCB Disposal Approval to operate its mobile High Performance Thermal Desorption Unit (HP-TDU). The National Program Chemicals Division (NPCD) of the U.S. Environmental Protection Agency (EPA) is reviewing the results of the Demonstration at the Envirocare of Utah facility during August and September 2004. Prior to the issuance of the PCB Disposal Approval under the Toxic Substance Control Act (TSCA), NPCD requires submission of a written plan and financial assurance documents for closure of the unit. TDX must submit the actual financial instruments or other documentation confirming establishment of financial assurance for closure. Financial assurance must be based on the written plan for closure of the mobile HP-TDU. Major components of a closure plan should include decontamination of the treatment unit by a third party with off-site disposal of all waste residues by a third party or off-site disposal of all contaminated components. Additional tasks may need to be identified and costed out to complete closure, depending on the specifics of your situation. Closure cost estimates must be calculated using third party labor cost, they must be based on a worst case scenario and they must closely follow requirements and procedures for closure of commercial storage facilities pursuant to 40CFR 761.65(e) and (f). Financial assurance requirements are delineated at 40CFR 761.65(g). For your convenience, these sections of the PCB regulations are enclosed.

If you have any questions regarding this matter, please contact Dave Hannemann at (202) 566-0508 or Hiroshi Dodohara at (202) 566-0507.

Sincerely,

A handwritten signature in cursive script, reading "Maria J. Doa", is written over a horizontal line.

Maria J. Doa, Ph.D.  
Director  
National Program Chemicals Division

Enclosure

cc: PCB Coordinators  
USEPA, Regions I - X

Carl Palmer  
TD\*X Associates, Inc.

## §761.65 Storage for disposal

### (e) *Closure.*

(1) A commercial storer of PCB waste shall have a written closure plan that identifies the steps that the owner or operator of the facility shall take to close the PCB waste storage facility in a manner that eliminates the potential for post-closure releases of PCBs which may present an unreasonable risk to human health or the environment. An acceptable closure plan must include, at a minimum, all of the following:

(i) A description of how the PCB storage areas of the facility will be closed in a manner that eliminates the potential for post-closure releases of PCBs into the environment.

(ii) An identification of the maximum extent of storage operations that will be open during the active life of the facility, including an identification of the extent of PCB storage operations at the facility relative to other wastes that will be handled at the facility.

(iii) An estimate of the maximum inventory of PCB wastes that could be handled at one time at the facility over its active life, and a detailed description of the methods or arrangements to be used during closure for removing, transporting, storing, or disposing of the facility's inventory of PCB waste, including an identification of any off-site facilities that will be used.

(iv) A detailed description of the steps needed to remove or decontaminate PCB waste residues and contaminated containment system components, equipment, structures, and soils during closure in accordance with the levels specified in the PCB Spills Cleanup Policy in subpart G of this part, including a description of the methods for sampling and testing of surrounding soils, and the criteria for determining the extent of removal or decontamination.

(v) A detailed description of other activities necessary during the closure period to ensure that any post-closure releases of PCBs will not present unreasonable risks to human health or the environment. This includes activities such as ground-water monitoring, run-on and run-off control, and facility security.

(vi) A schedule for closure of each area of the facility where PCB waste is stored or handled, including the total time required to close each area of PCB waste storage or handling, and the time required for any intervening closure activities.

(vii) An estimate of the expected year of closure of the PCB waste storage areas, if a trust fund is opted for as the financial mechanism.

(2) A written closure plan determined to be acceptable by the Regional Administrator (or the Director, National Programs Chemical Division, if the commercial storage area is ancillary to a disposal facility approved by the Director, National Programs Chemical Division) under this section shall become a condition of any approval granted under paragraph (d) of this section.

(3) A separate and new closure plan need not be submitted in cases where a facility is currently covered by a TSCA approval or a RCRA permit, upon a showing to the satisfaction of the Regional Administrator (or the Director, National Programs Chemical Division, if the commercial storage area is ancillary to a disposal facility approved by the Director, National Programs Chemical Division) that the existing closure plan is substantially equivalent to closure plans required under paragraphs (d) through (g) of this section, and that the plan adequately accounts for PCB waste inventories.

(4) The commercial storer of PCB waste shall submit a written request to the Regional Administrator (or the Director, National Programs Chemical Division, if he approved the closure plan) for a modification to its storage approval to amend its closure plan, whenever:

- (i) Changes in ownership, operating plans, or facility design affect the existing closure plan.
- (ii) There is a change in the expected date of closure, if applicable.
- (iii) In conducting closure activities, unexpected events require a modification of the approved closure plan.

(5) The Regional Administrator or the Director, National Programs Chemical Division, if he approved the closure plan, may modify the existing closure plan under the conditions described in paragraph (e)(4) of this section.

(6) Commercial storers of PCB waste shall comply with the following closure schedule:

- (i) The commercial storer shall notify in writing the Regional Administrator or the Director, National Programs Chemical Division if he approved the closure plan, at least 60 days prior to the date on which final closure of its PCB storage facility is expected to begin.
- (ii) The date when a commercial storer of PCB waste "expects to begin closure" shall be no later than 30 days after the date on which the storage facility received its final quantities of PCB waste. For good cause shown, the Regional Administrator or the Director, National Programs Chemical Division if he approved the closure plan, may extend the date for commencement of closure for an additional 30-day period.
- (iii) Within 90 days after receiving the final quantity of PCB waste for storage, a commercial storer of PCB waste shall remove all PCB waste in storage at the facility from the facility in accordance with the approved closure plan. For good cause shown, the Regional Administrator or the Director, National Programs Chemical Division if he approved the closure plan, may approve a reasonable extension to the period for removal of the PCB waste.
- (iv) A commercial storer of PCB waste shall complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final quantity of PCB waste for storage at the facility. For good cause shown, the Regional Administrator or Director, National Programs Chemical Division if he approved the closure plan, may approve a reasonable extension to the closure

period.

(7) During the closure period, all contaminated system component equipment, structures, and soils shall be disposed of in accordance with the disposal requirements of subpart D of this part, or, if applicable, decontaminated in accordance with the levels specified in the PCB Spills Cleanup Policy at subpart G of this part. When PCB waste is removed from the storage facility during closure, the owner or operator becomes a generator of PCB waste subject to the generator requirements of subpart J of this part.

(8) Within 60 days of completion of closure of each facility for the storage of PCB waste, the commercial storer of PCB waste shall submit to the Regional Administrator (or Director, National Programs Chemical Division if he approved the closure plan), by registered mail, a certification that the PCB storage facility has been closed in accordance with the approved closure plan. The certification shall be signed by the owner or operator and by an independent registered professional engineer.

(f) *Closure cost estimate.*

(1) A commercial storer of PCB wastes shall have a detailed estimate, in current dollars, of the cost of closing the facility in accordance with its approved closure plan. The closure cost estimate shall be in writing, be certified by the person preparing it (using the certification defined in §761.3) and comply with all of the following criteria:

(i) The closure cost estimate shall equal the cost of final closure at the point in the PCB storage facility's active life when the extent and manner of PCB storage operations would make closure the most expensive, as indicated by the facility's closure plan.

(ii) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility, and the third party shall not be either a corporate parent or subsidiary of the owner or operator, or member in joint ownership of the facility.

(iii) The owner or operator shall include in the estimate the current market costs for off-site commercial disposal of the facility's maximum estimated inventory of PCB wastes, except that on-site disposal costs may be used if on-site disposal capacity will exist at the facility at all times over the life of the PCB storage facility.

(iv) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of wastes, facility structures or equipment, land, or other assets associated with the facility at the time of closure.

(2) During the active life of the PCB storage facility, the commercial storer of PCB waste shall adjust annually for inflation the closure cost estimate within 60 days prior to the anniversary date of the establishment of the financial instruments used to demonstrate financial responsibility for closure, except that owners or operators who use the financial test or corporate guarantee shall adjust their closure cost estimates for inflation within 30 days after the close of the storer's fiscal year. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product

published by the U.S. Department of Commerce in its *Survey of Current Business*. The Implicit Price Deflator for Gross National Product is included in a monthly publication titled *Economic Indicators*, which is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The inflation factor used in the latter method is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The adjustment to the closure cost estimate is then made by multiplying the most recent closure cost estimate by the latest inflation factor.

(3) Where the Regional Administrator (or the Director, National Programs Chemical Division, if he approved the closure plan) approves a modification to the facility's closure plan, and that modification increases the cost of closure, the owner or operator shall revise the closure cost estimate no later than 30 days after the modification is approved. Any such revision shall also be adjusted for inflation in accordance with paragraph (f)(2) of this section.

(4) The owner or operator of the facility shall keep at the facility during its operating life the most recent closure cost estimate, including any adjustments resulting from inflation or from modifications to the closure plan.

(g) *Financial assurance for closure.* A commercial storer of PCB waste shall establish financial assurance for closure of each PCB storage facility that he owns or operates. In establishing financial assurance for closure, the commercial storer of PCB waste may choose from the following financial assurance mechanisms or any combination of mechanisms:

(1) The "closure trust fund," as specified in §264.143(a) of this chapter, except for paragraph (a)(3) of §264.143. For purposes of this paragraph, the following provisions also apply:

(i) Payments into the trust fund shall be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period." For an existing facility, the first payment must be made within 30 calendar days after EPA has notified the facility of its conditional approval. Interim approval to operate is canceled and the application is denied if EPA does not receive verification that the payment was made in that 30-day period.

(ii) For a new facility, the first payment into the closure trust fund shall be made before EPA grants final approval of the application and before the facility may accept the initial shipment of PCB waste for commercial storage. A receipt from the trustee shall be submitted by the owner or operator to the Regional Administrator (or the Director, National Programs Chemical Division, if the commercial storage area is ancillary to a disposal facility approved by the Director CMD) before this initial delivery of PCB waste. The first payment shall be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (g)(7) of this section for multiple mechanisms. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by subtracting the current value of the trust fund from the

current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period.

(iii) If an owner or operator of a facility existing on the effective date of this paragraph establishes a trust fund to meet the financial assurance requirements of this paragraph, and the value of the trust fund is less than the current closure cost estimate when a final approval is granted for the facility, the amount of the current closure cost estimate still to be paid into the trust fund shall be paid in over the pay-in period as defined in paragraph (g)(1)(i) of this section. Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made into the trust fund. The amount of each payment shall be determined by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period.

(iv) The submission of a trust agreement with the wording specified in §264.151(a)(1) of this chapter, including any reference to hazardous waste management facilities, shall be deemed to be in compliance with the requirement to submit a trust agreement under this subpart.

(2) The "surety bond guaranteeing payment into a closure trust fund," as specified in §264.143(b) of this chapter, including the use of the surety bond instrument specified at §264.151(b) of this chapter and the standby trust specified at §264.143(b)(3) of this chapter. The use of the surety bonds, surety bond instruments, and standby trust agreements specified in §§264.143(b) and 264.151(b) of this chapter shall be deemed to be in compliance with this subpart.

c. (i) The "surety bond guaranteeing performance of closure," as specified at §264.143(c) of this chapter, except for paragraph (c)(5) of §264.143 of this chapter. The submission and use of the surety bond instrument specified at §264.151(c) of this chapter and the standby trust specified at §264.143(c)(3) of this chapter shall be deemed to be in compliance with the requirements under this subpart relating to the use of surety bonds and standby trust funds.

(ii) For the purposes of this paragraph, and under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Liability is established by a final administrative determination pursuant to section 16 of TSCA that the owner or operator has failed to perform final closure in accordance with the closure plan and other approval or regulatory requirements when required to do so.

(4) (i) The "closure letter of credit" specified in §264.143(d) of this chapter, except for paragraph (d)(8). The submission and use of the irrevocable letter of credit instrument specified in §264.151(d) of this chapter and the standby trust specified in §264.143(d)(3) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of letters of credit and standby trust funds.

(ii) For the purposes of this paragraph, the Regional Administrator (or the Director, National Programs Chemical Division, if the commercial storage area is

ancillary to a disposal facility approved by the Director, National Programs Chemical Division) may draw on the letter of credit following a final administrative determination pursuant to section 16 of TSCA that the owner or operator has failed to perform final closure in accordance with the closure plan and other approval or regulatory requirements when required to do so.

(5) "Closure insurance," as specified in §264.143(e) of this chapter, utilizing the certificate of insurance for closure specified at §264.151(e) of this chapter. The use of closure insurance as specified in §264.143(e) of this chapter and the submission and use of the certificate of insurance specified in §264.151(e) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of closure insurance.

(6) The "financial test and corporate guarantee for closure," as described in §264.143(f) of this chapter, including a letter signed by the owner's or operator's chief financial officer as specified at §264.151(f) of this chapter and, if applicable, the written corporate guarantee specified at §264.151(h) of this chapter. The use of the financial test and corporate guarantee specified in §264.143(f) of this chapter, the submission and use of the letter specified in §264.151(f) of this chapter, and the submission and use of the written corporate guarantee specified at §264.151(h) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of financial tests and corporate guarantees.

(7) The corporate guarantee as specified in §264.143(f)(10) of this chapter.

(8) The use of multiple financial mechanisms, as specified in §264.143(g) of this chapter is permitted.

(9) A modification to a facility storing PCB waste that increases the maximum storage capacity indicated in the permit requires that a new financial assurance mechanism be established or an existing one be amended. When such a modification occurs, the Director of the Federal or State issuing authority must be notified in writing no later than 30 days from the completion of the modification. The new or revised financial assurance mechanism must be established and activated no later than 30 days after the Director of the Federal or State issuing authority is notified of the completion of the modification, but prior to the use of the modified portion of the facility.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOV 25 2005

*made cps for  
maria  
Daddy*

Mr. Carl Palmer, Director  
Thermal Process Group  
TD\*X Associates, LLC  
P.O. Box 13216  
Research Triangle Park, NC 27709

*JOYCELYN*

Dear Mr. Palmer:

This letter concerns the TD\*X Associates, LLC (TDX) PCB Disposal Approval to operate its mobile High Performance Thermal Desorption Unit (HP-TDU). The National Program Chemicals Division (NPCD) of the U.S. Environmental Protection Agency (EPA) is reviewing the results of the Demonstration at the Envirocare of Utah facility during August and September 2004. Prior to the issuance of the PCB Disposal Approval under the Toxic Substance Control Act (TSCA), NPCD requires submission of a written plan and financial assurance documents for closure of the unit. TDX must submit the actual financial instruments or other documentation confirming establishment of financial assurance for closure. Financial assurance must be based on the written plan for closure of the mobile HP-TDU. Major components of a closure plan should include decontamination of the treatment unit by a third party with off-site disposal of all waste residues by a third party or off-site disposal of all contaminated components. Additional tasks may need to be identified and costed out to complete closure, depending on the specifics of your situation. Closure cost estimates must be calculated using third party labor cost, they must be based on a worst case scenario and they must closely follow requirements and procedures for closure of commercial storage facilities pursuant to 40CFR 761.65(e) and (f). Financial assurance requirements are delineated at 40CFR 761.65(g). For your convenience, these sections of the PCB regulations are enclosed.

If you have any questions regarding this matter, please contact Dave Hannemann at (202) 566-0508 or Hiroshi Dodohara at (202) 566-0507.

Sincerely,

Maria J. Doa, Ph.D.  
Director  
National Program Chemicals Division

Enclosure

CONCURRENCES

SYMBOL	7404T	7404T					
SURNAME	Dodohara	Hannemann					
DATE	11-18-05	18 Nov 05					

cc: PCB Coordinators  
USEPA, Regions I - X

Carl Palmer  
TD\*X Associates, Inc.

## §761.65 Storage for disposal

### (e) *Closure.*

(1) A commercial storer of PCB waste shall have a written closure plan that identifies the steps that the owner or operator of the facility shall take to close the PCB waste storage facility in a manner that eliminates the potential for post-closure releases of PCBs which may present an unreasonable risk to human health or the environment. An acceptable closure plan must include, at a minimum, all of the following:

- (i) A description of how the PCB storage areas of the facility will be closed in a manner that eliminates the potential for post-closure releases of PCBs into the environment.
- (ii) An identification of the maximum extent of storage operations that will be open during the active life of the facility, including an identification of the extent of PCB storage operations at the facility relative to other wastes that will be handled at the facility.
- (iii) An estimate of the maximum inventory of PCB wastes that could be handled at one time at the facility over its active life, and a detailed description of the methods or arrangements to be used during closure for removing, transporting, storing, or disposing of the facility's inventory of PCB waste, including an identification of any off-site facilities that will be used.
- (iv) A detailed description of the steps needed to remove or decontaminate PCB waste residues and contaminated containment system components, equipment, structures, and soils during closure in accordance with the levels specified in the PCB Spills Cleanup Policy in subpart G of this part, including a description of the methods for sampling and testing of surrounding soils, and the criteria for determining the extent of removal or decontamination.
- (v) A detailed description of other activities necessary during the closure period to ensure that any post-closure releases of PCBs will not present unreasonable risks to human health or the environment. This includes activities such as ground-water monitoring, run-on and run-off control, and facility security.
- (vi) A schedule for closure of each area of the facility where PCB waste is stored or handled, including the total time required to close each area of PCB waste storage or handling, and the time required for any intervening closure activities.
- (vii) An estimate of the expected year of closure of the PCB waste storage areas, if a trust fund is opted for as the financial mechanism.

(2) A written closure plan determined to be acceptable by the Regional Administrator (or the Director, National Programs Chemical Division, if the commercial storage area is ancillary to a disposal facility approved by the Director, National Programs Chemical Division) under this section shall become a condition of any approval granted under paragraph (d) of this section.

(3) A separate and new closure plan need not be submitted in cases where a facility is

currently covered by a TSCA approval or a RCRA permit, upon a showing to the satisfaction of the Regional Administrator (or the Director, National Programs Chemical Division, if the commercial storage area is ancillary to a disposal facility approved by the Director, National Programs Chemical Division) that the existing closure plan is substantially equivalent to closure plans required under paragraphs (d) through (g) of this section, and that the plan adequately accounts for PCB waste inventories.

(4) The commercial storer of PCB waste shall submit a written request to the Regional Administrator (or the Director, National Programs Chemical Division, if he approved the closure plan) for a modification to its storage approval to amend its closure plan, whenever:

- (i) Changes in ownership, operating plans, or facility design affect the existing closure plan.
- (ii) There is a change in the expected date of closure, if applicable.
- (iii) In conducting closure activities, unexpected events require a modification of the approved closure plan.

(5) The Regional Administrator or the Director, National Programs Chemical Division, if he approved the closure plan, may modify the existing closure plan under the conditions described in paragraph (e)(4) of this section.

(6) Commercial storers of PCB waste shall comply with the following closure schedule:

(i) The commercial storer shall notify in writing the Regional Administrator or the Director, National Programs Chemical Division if he approved the closure plan, at least 60 days prior to the date on which final closure of its PCB storage facility is expected to begin.

(ii) The date when a commercial storer of PCB waste "expects to begin closure" shall be no later than 30 days after the date on which the storage facility received its final quantities of PCB waste. For good cause shown, the Regional Administrator or the Director, National Programs Chemical Division if he approved the closure plan, may extend the date for commencement of closure for an additional 30-day period.

(iii) Within 90 days after receiving the final quantity of PCB waste for storage, a commercial storer of PCB waste shall remove all PCB waste in storage at the facility from the facility in accordance with the approved closure plan. For good cause shown, the Regional Administrator or the Director, National Programs Chemical Division if he approved the closure plan, may approve a reasonable extension to the period for removal of the PCB waste.

(iv) A commercial storer of PCB waste shall complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final quantity of PCB waste for storage at the facility. For good cause shown, the Regional Administrator or Director, National Programs Chemical Division if he approved the closure plan, may approve a reasonable extension to the closure period.

(7) During the closure period, all contaminated system component equipment, structures,

and soils shall be disposed of in accordance with the disposal requirements of subpart D of this part, or, if applicable, decontaminated in accordance with the levels specified in the PCB Spills Cleanup Policy at subpart G of this part. When PCB waste is removed from the storage facility during closure, the owner or operator becomes a generator of PCB waste subject to the generator requirements of subpart J of this part.

(8) Within 60 days of completion of closure of each facility for the storage of PCB waste, the commercial storer of PCB waste shall submit to the Regional Administrator (or Director, National Programs Chemical Division if he approved the closure plan), by registered mail, a certification that the PCB storage facility has been closed in accordance with the approved closure plan. The certification shall be signed by the owner or operator and by an independent registered professional engineer.

(f) *Closure cost estimate.*

(1) A commercial storer of PCB wastes shall have a detailed estimate, in current dollars, of the cost of closing the facility in accordance with its approved closure plan. The closure cost estimate shall be in writing, be certified by the person preparing it (using the certification defined in §761.3) and comply with all of the following criteria:

(i) The closure cost estimate shall equal the cost of final closure at the point in the PCB storage facility's active life when the extent and manner of PCB storage operations would make closure the most expensive, as indicated by the facility's closure plan.

(ii) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility, and the third party shall not be either a corporate parent or subsidiary of the owner or operator, or member in joint ownership of the facility.

(iii) The owner or operator shall include in the estimate the current market costs for off-site commercial disposal of the facility's maximum estimated inventory of PCB wastes, except that on-site disposal costs may be used if on-site disposal capacity will exist at the facility at all times over the life of the PCB storage facility.

(iv) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of wastes, facility structures or equipment, land, or other assets associated with the facility at the time of closure.

(2) During the active life of the PCB storage facility, the commercial storer of PCB waste shall adjust annually for inflation the closure cost estimate within 60 days prior to the anniversary date of the establishment of the financial instruments used to demonstrate financial responsibility for closure, except that owners or operators who use the financial test or corporate guarantee shall adjust their closure cost estimates for inflation within 30 days after the close of the storer's fiscal year. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*. The Implicit Price Deflator for Gross National Product is included in a monthly publication titled *Economic Indicators*, which is available from the Superintendent of Documents,

Government Printing Office, Washington, DC 20402. The inflation factor used in the latter method is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The adjustment to the closure cost estimate is then made by multiplying the most recent closure cost estimate by the latest inflation factor.

(3) Where the Regional Administrator (or the Director, National Programs Chemical Division, if he approved the closure plan) approves a modification to the facility's closure plan, and that modification increases the cost of closure, the owner or operator shall revise the closure cost estimate no later than 30 days after the modification is approved. Any such revision shall also be adjusted for inflation in accordance with paragraph (f)(2) of this section.

(4) The owner or operator of the facility shall keep at the facility during its operating life the most recent closure cost estimate, including any adjustments resulting from inflation or from modifications to the closure plan.

(g) *Financial assurance for closure.* A commercial storer of PCB waste shall establish financial assurance for closure of each PCB storage facility that he owns or operates. In establishing financial assurance for closure, the commercial storer of PCB waste may choose from the following financial assurance mechanisms or any combination of mechanisms:

(1) The "closure trust fund," as specified in §264.143(a) of this chapter, except for paragraph (a)(3) of §264.143. For purposes of this paragraph, the following provisions also apply:

(i) Payments into the trust fund shall be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period." For an existing facility, the first payment must be made within 30 calendar days after EPA has notified the facility of its conditional approval. Interim approval to operate is canceled and the application is denied if EPA does not receive verification that the payment was made in that 30-day period.

(ii) For a new facility, the first payment into the closure trust fund shall be made before EPA grants final approval of the application and before the facility may accept the initial shipment of PCB waste for commercial storage. A receipt from the trustee shall be submitted by the owner or operator to the Regional Administrator (or the Director, National Programs Chemical Division, if the commercial storage area is ancillary to a disposal facility approved by the Director CMD) before this initial delivery of PCB waste. The first payment shall be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (g)(7) of this section for multiple mechanisms. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period.

(iii) If an owner or operator of a facility existing on the effective date of this

paragraph establishes a trust fund to meet the financial assurance requirements of this paragraph, and the value of the trust fund is less than the current closure cost estimate when a final approval is granted for the facility, the amount of the current closure cost estimate still to be paid into the trust fund shall be paid in over the pay-in period as defined in paragraph (g)(1)(i) of this section. Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made into the trust fund. The amount of each payment shall be determined by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period.

(iv) The submission of a trust agreement with the wording specified in §264.151(a)(1) of this chapter, including any reference to hazardous waste management facilities, shall be deemed to be in compliance with the requirement to submit a trust agreement under this subpart.

(2) The "surety bond guaranteeing payment into a closure trust fund," as specified in §264.143(b) of this chapter, including the use of the surety bond instrument specified at §264.151(b) of this chapter and the standby trust specified at §264.143(b)(3) of this chapter. The use of the surety bonds, surety bond instruments, and standby trust agreements specified in §§264.143(b) and 264.151(b) of this chapter shall be deemed to be in compliance with this subpart.

c.

(i) The "surety bond guaranteeing performance of closure," as specified at §264.143(c) of this chapter, except for paragraph (c)(5) of §264.143 of this chapter. The submission and use of the surety bond instrument specified at §264.151(c) of this chapter and the standby trust specified at §264.143(c)(3) of this chapter shall be deemed to be in compliance with the requirements under this subpart relating to the use of surety bonds and standby trust funds.

(ii) For the purposes of this paragraph, and under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Liability is established by a final administrative determination pursuant to section 16 of TSCA that the owner or operator has failed to perform final closure in accordance with the closure plan and other approval or regulatory requirements when required to do so.

(4)

(i) The "closure letter of credit" specified in §264.143(d) of this chapter, except for paragraph (d)(8). The submission and use of the irrevocable letter of credit instrument specified in §264.151(d) of this chapter and the standby trust specified in §264.143(d)(3) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of letters of credit and standby trust funds.

(ii) For the purposes of this paragraph, the Regional Administrator (or the Director, National Programs Chemical Division, if the commercial storage area is ancillary to a disposal facility approved by the Director, National Programs Chemical Division) may draw on the letter of credit following a final administrative determination pursuant to section 16 of TSCA that the owner or operator has failed to perform final closure in accordance with the closure plan

and other approval or regulatory requirements when required to do so.

(5) "Closure insurance," as specified in §264.143(e) of this chapter, utilizing the certificate of insurance for closure specified at §264.151(e) of this chapter. The use of closure insurance as specified in §264.143(e) of this chapter and the submission and use of the certificate of insurance specified in §264.151(e) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of closure insurance.

(6) The "financial test and corporate guarantee for closure," as described in §264.143(f) of this chapter, including a letter signed by the owner's or operator's chief financial officer as specified at §264.151(f) of this chapter and, if applicable, the written corporate guarantee specified at §264.151(h) of this chapter. The use of the financial test and corporate guarantee specified in §264.143(f) of this chapter, the submission and use of the letter specified in §264.151(f) of this chapter, and the submission and use of the written corporate guarantee specified at §264.151(h) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of financial tests and corporate guarantees.

(7) The corporate guarantee as specified in §264.143(f)(10) of this chapter.

(8) The use of multiple financial mechanisms, as specified in §264.143(g) of this chapter is permitted.

(9) A modification to a facility storing PCB waste that increases the maximum storage capacity indicated in the permit requires that a new financial assurance mechanism be established or an existing one be amended. When such a modification occurs, the Director of the Federal or State issuing authority must be notified in writing no later than 30 days from the completion of the modification. The new or revised financial assurance mechanism must be established and activated no later than 30 days after the Director of the Federal or State issuing authority is notified of the completion of the modification, but prior to the use of the modified portion of the facility.

# ROUTING SLIP

#	NAME	ACTION	INITIAL	DATE
1	Hiroshi Dodohara	Originator	<i>HD</i>	11-18-05
2	Dave Hannemann	Concur	<i>DH</i>	18 Nov. 05
3	Maria Doa	Sign	<i>MD</i>	28 Nov 05
4	Pat Robinson	Administrative	<i>PR</i>	11/25/05
5				
6				
7				
8				
9				

8m 11/17

*Joycelyn*

*Pls make*

*copy for me.*

*Thx PR*

Nature of Item Being

Letter informing T  
Disposal operation

prior to issuance of PCB

This is a re-submission.

FROM:

H. Dodohara

DATE

7/28/05

TELE #

566-  
0507

ROOM #

EPA East  
4353QQ